BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION

GLENN A. ANDREWS, JR. Claimant VS. **KCI ROADRUNNER EXPRESS, INC.** Respondent AND **CONTINENTAL WESTERN INS. CO.** Insurance Carrier	)	Docket No. 1,014,812

ORDER

Claimant appealed the April 21, 2004 preliminary hearing Order entered by Administrative Law Judge (ALJ) Bryce D. Benedict.

ISSUES

This is a claim for a December 15, 2003 injury that occurred after claimant had finished work and was riding in a taxi-cab on route to a grocery store to meet his wife and child. Following a preliminary hearing on April 14, 2004, Judge Benedict denied claimant the requested benefits, finding the accident did not arise out of and in the course of employment.

Claimant contends the ALJ erred by applying the going and coming rule to find that claimant's accident did not arise out of and in the course of his employment with the respondent because "respondent had a policy of providing free taxi service to its employees to and from work. Evidence from the claimant in his testimony, and from the affidavits, clearly reflect that transportation was provided by the employer to and from work,

and it was customary at the end of a shift to obtain a free ride to a location other than home."[1]

Respondent and its insurance carrier argue that the accident was not associated with claimant's employment and it did not occur while claimant was engaged in employment activities. They contend, therefore, the accident is not compensable under the Workers Compensation Act.

The only issue before the Appeals Board (Board) on this appeal is whether claimant's accident arose out of and in the course of his employment with the respondent.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record compiled to date, the Board finds:

1. The preliminary hearing Order should be affirmed.

2. An injury is compensable under the Workers Compensation Act if it arises out of and in the course of employment.[2] The Act addresses "arising out of and in the course of employment" in the following "going and coming" rule.

> The words "arising out of and in the course of employment" as used in the workers compensation act shall not be construed to include injuries to the employee occurring while the employee is on the way to assume the duties of employment or after leaving such duties, the proximate cause of which injury is not the employer's negligence. An employee shall not be construed as being on the way to assume the duties of employment or having left such duties at a time when the worker is on the premises of the employer or on the only available route to or from work which is a route involving a special risk or hazard and which is a route not used by the public except in dealings with the employer. [3]

3. The Workers Compensation Act is to be liberally construed to bring both employers and employees within its provision affording them the protections of the Act.[4]

4. When construing statutes, legislative intent is to be determined by considering the

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[1] Claimant's Brief to the Board at 1 (filed May 18, 2004).

[2] K.S.A. 44-501(a); *See Chapman v. Victory Sand & Stone Co.*, 197 Kan. 377, 382-383, 416 P.2d 754 (1966).

[3] K.S.A. 44-501(f); *See Chapman v. Beech Aircraft Corp.,* 258 Kan. 653, 907 P.2d 828 (1995).

[4] K.S.A. 44-501(g).

entire act. If possible, effect must be given to every part of the Act. As far as practicable, the different provisions of the Act should be construed to make them consistent, harmonious, and sensible.[5]

5. As a general rule, statutes should be construed to avoid unreasonable results. There exists a presumption that the legislature does not intend to enact useless or meaningless law.[6]

6. Respondent argues that claimant is not entitled to benefits in this matter based on the "coming and going" rule. The plain and unambiguous language of the statute excludes injuries to an employee occurring after the employee has left his duties of employment.

7. Respondent did not have control of the taxi-cab because it was owned by another corporation and the driver was not an employee of respondent. Accordingly, the proximate cause of claimant's injury was not the respondent's negligence.

8. The Board agrees with the ALJ and finds that claimant's accident did not arise out of and in the course of his employment with respondent.

WHEREFORE, the Appeals Board affirms the April 21, 2004 preliminary hearing Order entered by Administrative Law Judge Bryce D. Benedict.

IT IS SO ORDERED.

Dated this _____ day of August 2004.

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BOARD MEMBER

c: Jeffrey K. Cooper, Attorney for Claimant
Eric T. Lanham, Attorney for Respondent and its Insurance Carrier
Bryce D. Benedict, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director

[5] *KPERS v. Reimer & Koger Assoc.'s Inc.,* 262 Kan. 635, 941 P.2d 1321 (1997).

[6] *Id.* at 643.